

YOLO COUNTY

FLOOD CONTROL &  
WATER CONSERVATION  
DISTRICT



JUL 01 1998

June 4, 1998

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Rick Breitenbach  
CALFED Bay/Delta Program  
1416 9<sup>th</sup> Street, Suite 1155  
Sacramento, CA 95814

Re: CALFED Bay/Delta Program Programmatic EIS/EIR

Dear Mr. Breitenbach:

Thank you for the opportunity for Yolo County Flood Control and Water Conservation District to provide written comments on the CALFED Bay/Delta Program Programmatic EIS/EIR. Our District's comments are enclosed.

We understand that CALFED intends to prepare a revised draft programmatic EIS/EIR that will identify a draft preferred alternative and which will be available for public review and comment before preparation of a final programmatic EIS/EIR in 1999. Our District strongly recommends that the draft EIS/EIR be extensively rewritten before it is reissued. Virtually every component of the draft program, as now written, would result in significant adverse redirected impacts to agriculture and agricultural communities in the Sacramento Valley. It seems clear that the purpose of the draft program is to cause a massive transfer of water resources from the Sacramento Valley to CALFED purposes, resulting in many significant impacts that would shake the very foundation of agricultural production in the Sacramento Valley. Yet, the draft program proposes no meaningful mitigation for those impacts.

Our District would expect northern California communities to oppose the CALFED program in the strongest terms unless it is substantially revised to address and resolve the concerns noted in our comments.

Sincerely,

L. H. "Roy" Barth, Chairman  
Board of Directors

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Enclosure

c: (w/encl.)  
Senator K. Maurice Johannessen  
Assemblywoman Helen Thomson  
Yolo County Board of Supervisors  
Water Resources Association of Yolo County  
Northern California Water Association  
Association of California Water Agencies  
California Chamber of Commerce Water Resources Committee  
Regional Council of Rural Counties

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## **COMMENTS ON CALFED DRAFT PROGRAMMATIC EIS/EIR**

Yolo County Flood Control & Water Conservation District ("District") submits the following comments on the Draft CALFED Programmatic EIS/EIR.

### **No redirected Impacts.**

The District supports in concept the objectives of the CALFED program, namely improvements to ecosystem quality, water supply, water quality and Delta facilities, and supports the principles stated to achieve those objectives. Adherence to the program's solution principles will be crucial to its success. One of the most important principles is that the program's solutions will not cause impacts to be redirected to other areas of California. Every objective of the program must stand a test of rigorous adherence to that principle. The principle, if it is to mean anything, cannot be qualified or diluted in any respect. CALFED should make it clear that the phrase, "when viewed in their entirety," does not mean that a program "solution" that causes a negative impact elsewhere (such as in Yolo County) is acceptable, and consistent with CALFED principles. The District will assume for purposes of these comments that the no redirected impact principle means what it says.

### **Programmatic EIS/EIR Not a Substitute for Real EIS/EIR with Impact Analysis and Mitigation.**

The Draft EIS/EIR provides no specific information on the details of the CALFED program, the impacts of the program in particular areas of measures to mitigate adverse impacts. As such, it has very little use as an environmental review document, and cannot substitute for full environmental review of the program's preferred alternative. When components of the CALFED program are implemented, there will need to be subsequent EIS/EIRs to analyze and mitigate the future sites and project-specific impacts. (CEQA

Guidelines Section 15168(c); *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 372.) The CALFED EIS/EIR should expressly commit to the preparation of such future EIS/EIRs or EIRs.

### **Need For CALFED Program.**

The discussion of the need for the program lists several actions that have impacted the Bay-Delta ecosystem. It includes upstream water development and use, and export of water from the Delta. If upstream diversions have caused any adverse impact to the Delta environmental resources (which we doubt), they have been insignificant compared to impacts caused by export projects. The District asserts that the primary cause of the diminishment of the Bay-Delta ecosystem, and hence the need for the CALFED program, is the export of water from the Delta. The EIS/EIR should be expanded to explain the relative causation, and the primary cause(s) of Bay-Delta impacts. The CALFED program approach seems to be to assign responsibility to mitigate for Delta conditions to areas that have not contributed to those conditions, which would violate the CALFED solution principles.

### **Water Supply Alternatives Analysis.**

The Census Bureau predicts that nearly 18 million more people will become Californians by the year 2025. That is comparable to the population of the State of New York moving to California. The CALFED program identifies the need for millions of acre feet of water to meet the program's goals. Yet, the program's analysis of water supply alternatives is very limited and unlikely to produce adequate supplies to meet California's future needs. The discussion of new water storage in the draft EIS/EIR excludes new onstream storage facilities. The District is concerned that the program includes undue and unrealistic reliance on water transfers and reduced agricultural water use in the Sacramento Valley (through conservation and conversion of fertile agricultural land to

habitat) as new sources of water. That approach would result in an unacceptable negative impact in the Sacramento Valley. The program should consider a full range of alternatives, including development of new onstream storage facilities in order to comply with CEQA.

It will also be essential that the program determine whether the development of new water supplies for Bay-Delta purposes will adversely effect the ability of the areas of origin to develop water supplies to meet their ultimate water needs. Yolo County, for example, needs to develop additional supplies to meet its future water needs. The District believes that it will be more difficult for Yolo County to acquire additional water supplies if it must compete with a massive CALFED water acquisition program. The EIS/EIR should examine if and how the CALFED program will adversely affect the District's ability to acquire water.

#### **Water Use "Efficiency" Program.**

The proposed water use efficiency program has the potential to cause significant adverse impacts within the Sacramento Valley that would violate the CALFED principle that "solutions" will not result in redirected impacts. The Draft EIS/EIR recognizes that conservation of agricultural water use in the Sacramento Valley does not result in new water supplies because water not consumed by crops remains in the water system for multiple uses. Inexplicably, the program nevertheless proposes (1) reduction of agricultural water use by hundred of thousands of acre feet, and (2) substantial redirected impacts in the Sacramento Valley, such as decreased production of agricultural land and land fallowing, increased groundwater pumping, and related socio-economic impacts.

Water conservation should be implemented only if it increases the available water supply, and is economically and environmentally feasible. In the Sacramento Valley, application of agricultural water recharges groundwater aquifers. Reduction in application of water in the name of "conservation" could reduce the groundwater supply and interfere with ongoing conjunctive use programs that are vital to local water supplies, particularly

during drought periods. Reduction in agricultural water application could adversely impact agricultural production if, as a result, salts are not leached from the soil's root zone or through use of lesser-quality recirculate water.

The proposal to increase the cost of agricultural water in the Sacramento Valley by \$45 to \$72 per acre foot per year to implement "conservation" measures would substantially impact agricultural production (page 8.1-37), without any real water savings. One must speculate whether the program intends to produce new water supplies by causing land in the Sacramento Valley to go out of production because of the cost of water is prohibitive or to force agriculture to use groundwater creating significant groundwater over-draft and associated problems. CALFED should clarify whether these will be project impacts.

The CALFED program should be revised to avoid these significant redirected impacts.

Under the California Constitution (Article 1, section 18) property may be taken or damaged only when just compensation is paid. Implementing so-called conservation and water use efficiency programs, and converting agricultural property to wildlife habitat uses, could result in the taking or reduction in value of property interests in the Sacramento Valley - "Inverse Condemnation." Such a result is identified in the Draft EIS/EIS. "It is equally axiomatic that once rights to use water are acquired, they become vested property rights. As such, they cannot be infringed by others or taken by governmental action without due process and just compensation." *United States v. SWRCB* (1986) 182 Cal. App. 3d 82, 101. (See also *Los Osos Associates v. City of San Luis Obispo* (1994) 30 Cal. App. 4<sup>th</sup> 1670, awarding inverse condemnation damages for subsidence damage caused from groundwater pumping.)

Inverse condemnation would by definition be diametrically opposed to the no redirected impacts principle of the CALFED. If the CALFED is going to abandon this principle, it needs to modify the program to indicate that in the document. Furthermore, the CALFED would then need to provide for compensation for not only the impacts but also the costs associated with the subsequent legal actions.

### **Water Transfers.**

Another potentially disturbing aspects of the program is the proposed definition of water use efficiency. The Draft EIS/EIR states (Water Use Efficiency Component Technical Appendix at page 2-1): "Efficiency can also be defined in economic terms: deriving the greatest economic output from a given input such as a unit of water... Program actions that facilitate as water transfer market will likely result in improved economic efficiency." The Sacramento Valley will support voluntary and locally controlled water transfers if they play a limited role in meeting California's water needs. The Sacramento Valley and other areas of origin will oppose the concept that "efficiency" dictates the transfer of water from beneficial uses in the area of origin to uses in export areas with water uses that are perceived to have higher values. Once that concept of efficiency is accepted, there is concern that water transfers from areas of origin will be required rather than permissive.

The Draft EIS/EIR states that the program's water transfer policy "must also provide a means of ensuring that water transfer do not merely improve short-term water supply reliability at the expense of local communities or groundwater resources" (page 2-15) Yet, there is nothing in the proposed transfer policy that creates that assurance. The District request that the CALFED program and EIS/EIR incorporated these principle:

1. Transfers should be voluntary, and the essence of a voluntary transfer is that the consent of the water right holder is needed. The policy should not pressure water right holders to consent to user-initiated transfers.

2. CALFED should declare that following agricultural land in the Sacramento Valley will not be pursued as a source of water under the CALFED.

3. Any conjunctive use transfer program must (a) be controlled by local public agencies in the area from which the water is to be transferred, (b) include a program of data collection to establish the safe yield of the affected aquifer, (c) carefully monitor the program to avoid impacts, (d) include a program to mitigate for impacts, and (e) include local benefits from the program.

4. CALFED should not pursue already developed water supplies from areas whose long-term water supplies will not meet long-term needs. CALFED should pursue water supplies only from areas that have identified a long-term surplus.

5. CALFED should pursue water supplies through development of both onstream and offstream storage facilities, instead of relying on water transfers and reduction in the application of agricultural water in the Sacramento Valley.

The Draft EIS/EIR acknowledges that the water transfer program could have significant adverse impacts in the Sacramento River region, including an increase in groundwater pumping, increased pumping costs, exacerbation of groundwater overdraft, reduction of groundwater recharge, reduction in crop yields due to poorer water quality, reduced farm output, land subsidence (referred to as "lower ground elevations") making affected areas more susceptible to flooding, infrastructure damage and reduce wildlife habitat. (See e.g., page 8.1-37) The Draft EIS/EIR states: "Pumping and subsidence occurring near levees or other flood control facilities could cause settlement of the

underlying substrate, resulting in levee slumping, cracking, or more significant damage" (Page 8.4-23). These would all be significant redirected adverse impacts in the Sacramento Valley from implementing the CALFED program. These types of impacts from water transfers from Yolo County have been documented in the University of California report "California Water Transfers:

Gainers and Losers in Two Northern Counties", by Coppock and Koreith, November 4, 1992. The EIS/EIR must provide for mitigation of these negative impacts.

### **Ecosystem Restoration Program.**

Water purchases to implement the ecosystem restoration program must not cause redirected impacts in the Sacramento Valley. Even if the program proposes purchases from willing sellers, competition of CALFED for water supplies with water-deficient areas in the areas of origin could cause a redirected adverse impact. This could create a situation of inverse condemnation as referenced previously on page 4. Conversion of 34,000 acres of agricultural land in the Sacramento Valley to implement the ecosystem restoration program could result in redirected adverse economic impacts, which would violate CALFED principles. Indeed, the Draft EIS/EIR's impact analysis (Table 3-1) shows extensive potential negative impacts to agricultural economies from implementing the program, which would violate the CALFED solution principles.

For example, the DRAFT EIS/EIR estimates that the CALFED ecosystem restoration program will result in loss in crop revenue of between \$13 million and \$34 million per year in the Sacramento River region, and acknowledges that there would be a substantial adverse economic impacts on farm revenues, income generation, employment levels and even the financial viability of water districts. (see, e.g. page 8.1 - 36.) Between 650 and 3,000 jobs might be lost (page 8.6-13). These impacts are identified in the Draft EIS/EIR as "potentially significant unavoidable impacts". (See, e.g., page 8.1-31.) The program



should be revised in order to avoid these redirected impacts and remain consistent with the CALFED principles.

### **Mitigation Measures Are Vague and Inadequate.**

Notwithstanding the extensive list of significant impacts from the CALFED program that would occur in the Sacramento Valley, the Draft EIS/EIR does not identify adequate mitigation measures. Nor does CALFED assume the responsibility to mitigate significant negative impacts caused by its program. For example, the Draft EIS/EIR states: "As discussed in the introduction to this summary, mitigations are proposed as strategies in this programmatic document and are conceptual in nature. Final mitigation would need to be approved by responsible agencies as specific projects are approved by subsequent environmental review" (emphasis added; page 8.1-38). Below that comment, the Draft EIS/EIR sets forth numerous, vague strategies (e.g., "provide advice on how to stretch existing water supplies in cost-effective ways to keep water acquisition costs down"; and "provide advice on ways to increase the production yielded from a unit of water... which will tend to keep production up even as acreage goes down") that are supposed to mitigate for the significant economic and other impacts that would result in the Sacramento Valley from implementation of the CALFED program.

Although for a program EIR, mitigation measures may be general, the EIR nevertheless must describe measures that could minimize the significant adverse impacts of the CALFED program. The mitigation measures may not be deferred until a future study or project. (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 376.)

The so-called mitigation strategies are too vague to provide meaningful insight as to the impacts of the CALFED program could be mitigated. An offer to "provide advice" is not mitigation. Indeed, it appears that the CALFED program cannot abide by the simple

principle that redirected impacts will not result from implementing the program. The Draft EIS/EIR appears to acknowledge that the program would result in significant adverse impacts in the Sacramento Valley that could not be mitigated. In order to comply with CEQA, the mitigation measures must be expanded and strengthened.

### **New Taxes and Fees.**

As noted above, the water use efficiency component of the CALFED program would result in substantially-higher water charges for agricultural users in the Sacramento Valley. These additional costs could make agricultural production uneconomic in the Sacramento Valley. The EIS/EIR socio-economic analysis must be expanded to address the impacts of the proposed tax.

In addition, CALFED proposes to impose a tax on all water diversions within the Bay-Delta watershed to pay for ecosystem restoration. (See page 26 of the Implementation Strategy Technical Appendix.) As noted at the outset of these comments, the overwhelming evidence is that the export of water from the Delta has been the primary cause of degradation of environmental resources in the Bay-Delta watershed. The District would strongly oppose the imposition of any such tax or fee on water.

### **Conclusion**

In conclusion, the preview of the proposed CALFED program set forth in the draft EIS/EIR discloses a plan that will result in significant adverse impacts to agriculture and the Sacramento Valley communities that depend on an agricultural economy. The proposed CALFED plan calls for a massive transfer of water (through ecosystem restoration, water use "efficiency", land fallowing and conjunctive use water transfers) from the Sacramento Valley agricultural use to CALFED purposes.

The CALFED solution principles are listed on the wall of the CALFED office of Sacramento. They include the principle that the CALFED program will not result in impacts elsewhere. Yet, the proposed CALFED program would violate that principle in every aspect of its implementation. The program needs to be extensively revised if there remains any expectation that it could be supported by Northern California.

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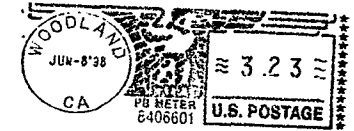
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